IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.6159 OF 2005
IN
FIRST APPEAL NO.2524 OF 2005

Shri Sharad Narayan Diwanji ...Applicant
Vs.
Sau Arati Shyam Sugandh & Ors. ...Respondents

Mr Sachin U. Dhakephalkar for the Applicant.
Mr Ajay Tamhane for the Respondent No.4.

CORAM : A. S. OKA, J.
DATE : MARCH 08, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned Advocate appearing for the Respondent No.4.

2. The learned Advocate for the Applicant submitted that the Applicant had nothing to do with the business of the original Defendant No.2 who is the son-in-law of the Applicant. He stated that even assuming that the original Plaintiff has any case on merits, the liability to make payment to the original Plaintiff is of original Defendant No.2 who is absconding. He stated that the Applicant is a senior citizen and therefore, the impugned Judgment and Decree may be stayed. It is stated that he is suffering from ailments like hypertension.

3. The impugned Judgment and Decree is money

decree. The execution and operation of the money decree cannot be stayed unless the entire amount due and payable under the decree is deposited by the Applicant. Only in exceptional cases the requirement of deposit can be dispensed with. In my view, considering the findings recorded by the Trial Court to the effect that the present Applicant was a partner of the original Defendant No.1, this case cannot be termed as exceptional case. In fact the Trial Court has observed that the Appellant admitted that he was a sleeping partner of Defendant No.1-Firm.

4. At this stage, the learned Advocate appearing for the Applicant on instructions of the Applicant who is stated to be present in the Court states that the Applicant is ready and willing to deposit sum of Rs.01,00,000/- in the Trial Court within period of one week without prejudice to his rights and contentions. In view of this statement and other factors pointed out by the Advocate appearing for the Applicant, longer time deserves to be granted to the Applicant to deposit the amount.

5. If the amount is deposited, the original Plaintiff will be entitled to withdraw the same on furnishing security to satisfaction of the Trial Court.

6. Hence, Civil Application is disposed of by passing following order:

: O R D E R :

(i) There will be interim relief in terms of prayer clause (a) subject to condition that the Applicant will deposit in the Appellate Court a sum of Rs.01,00,000/- within a period of one week from today and will deposit the entire balance amount payable under the impugned Judgment and Decree in the Trial Court within a period of twenty weeks from today.

(ii) If compliance is not made with the conditions imposed regarding deposit, interim stay granted will stand vacated automatically without reference to this court.

(iii) If the amount is deposited by the Applicant within the stipulated period, the original plaintiff will be permitted to withdraw the said amount on furnishing security to the satisfaction of the Trial Court.

(iv) Deposit of the amount and withdrawal thereof

will be without prejudice to the rights and contentions of the parties in the First Appeal and same will be subject to final outcome of the Appeal.

(v) It is clarified that order of stay will enure to the benefit of the only present Applicant and the original Plaintiff will be free to execute the decree against the other Defendant Nos.1 and 2. On the date on which the Respondent No.1 applies for widrawal of the amount, if the Respondent No.1 has recovered any amount by executing the Decree against the Defendant Nos.1 and 2, the Respondent No.1 will be entitled to widraw only remaining amount payable under the decree out of the amount deposited by the Applicant. In case the Respondent recovers any amount from the other Defendants, the Applicant will be at liberty to apply for modification of this order.

(vi) There will be no orders as to costs.

(vii) Parties and the Trial court to act upon an authenticated copy of this order.

JUDGE